

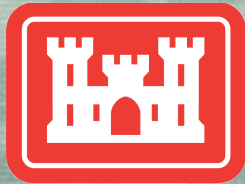
ECONOMY ACT ORDERS

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US Army Corps of Engineers
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Introductions

- Who I am and my role
- Why I'm here
- Who you are



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My dog, Doctor



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Have you considered
the Economy Act?



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OBJECTIVES

- To learn what the Economy Act is used for and when it is applicable
- To learn the requirements for Economy Act orders
 - ▶ Orders with contract actions vs.
 - ▶ Orders with no contract action
- To learn how to properly complete an Economy Act D&F



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What does the Economy Act Do

The Economy Act (31 U.S.C. §1535) authorizes agencies to enter into agreements to obtain supplies or services (including construction) from another agency.



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Focus of Training

- Economy Act transactions when USACE is the *requesting agency* and a **non-DoD** agency is the *servicing agency*.
 - ▶ *Requesting Agency* – the agency ordering the goods or services
 - ▶ *Servicing Agency* – The agency providing the goods or services
- Consult ENG REG 1140-1-211, *Support for Others: Non-DoD Reimbursable Services* if your district receives a request for support from another agency.



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NWD Policy

NWD Policy Memorandum, #07-12, Processing Economy Act Orders within USACE NWD

- Goes into detail as to what is required when you have an Economy Act order, to include the package that must be routed to NWD.
- Will likely see an updated in the next few months due to recent changes in authorities
- Almost everything in the policy comes from law or regulation



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Non-Economy Act Transactions

- The Economy Act only applies when more specific statutory authority does not exist
- Examples of Non-Economy Act Orders:
 - ▶ Federal Supplies Schedules – authority is 40 U.S.C. 501
 - ▶ Government-wide Acquisition Contracts (GWACSs) – authority is 40 U.S.C. 11302(e)
- Bottom line: If you have more specific authority, do not use the Economy Act.



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Contract vs. In-House Economy Act Orders

- Not all Economy Act orders include a contract action.
 - ▶ i.e. The servicing agency provides the support in-house.
- Economy Act orders including a contract action (aka: an *interagency acquisitions*).
 - ▶ Support will either be completed by:
 - Assisted Acquisition – The servicing agency performs acquisition activities on the requesting agency's behalf, such as awarding and administering a contract, task order, or delivery order;
 - or
 - Direct Acquisition – The requesting agency places an order *directly* against the servicing agency's indefinite-delivery contract.



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Contract vs. In-House Economy Act Orders

Why does it matter?

- ▶ The authorities that apply are different depending on whether there is a contract action involved
- ▶ The documentation required is different depending on whether there is a contract action involved.



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Contract Economy Act Orders

Authorities

- ▶ USACE NWD Memo, 13 Dec 2013, subject: Processing Economy Act Orders within USACE NWD
- ▶ FAR 17.5, Interagency Acquisitions***
- ▶ DoD Financial Management Regulations (FMR), 7000.14-R, Vol. 11A, Ch.3, March 2012
- ▶ FAR 17.7, Interagency Acquisitions: Acquisitions by Non-Defense Agencies on Behalf of DoD (*only if action over the SAT*)
- ▶ AFARS 5117.7802 / ASA(AL&T) Memo, July 12, 2005, subject: Proper Use of Non-DoD Contracts (*only if action over the SAT*)



DoDI 4000.19 does not apply



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In-House Economy Act Orders

Authorities

- ▶ USACE NWD Memo, 13 Dec 2013, subject: Processing Economy Act Orders within USACE NWD
- ▶ DoD Financial Management Regulations (FMR), 7000.14-R, Vol. 11A, Ch.3, March 2012
- ▶ DoD Instruction (DoDI) 4000.19, April 25, 2013, subject: Support Agreements

The FAR does not apply



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Doctor says: It's important to know when the FAR
does not apply



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When does FAR 17.5 **not** apply?

- If there is no contract action involved – i.e. all of the work is performed “in-house” by Federal employees.
- Contracting is merely “incidental to the purpose of the transaction.”
- Actions under the micro-purchase threshold.
- When the servicing agency is another DoD agency (DoDI 4000.19 & DoD FMR apply).



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Contract

Economy Act Orders

Requirements

- (1) Written Interagency Agreement
- (2) Certification of Availability for Purpose
- (3) Determination & Findings (D&F)
- (4) Best Procurement Approach Determination

Additional requirements if over the SAT

- (5) Non-DoD Certification – AFARS 5117.7802
- (6) FAR17.703 Certification from Non-DoD Agency



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Contract

Economy Act Orders

Requirements

- **Written Interagency Agreement** – (for *assisted acquisitions* only)
 - ▶ Required by FAR 17.502-1(b) & FAR 17.503(b)
 - ▶ **Usually consists of two documents** (but may be combined)
 - (1) *The Master Agreement (or Memorandum of Agreement (MOA))*
 - (2) *The Support Agreement (or Order)*
 - ▶ **Approval Authority for both documents is no lower than the NWD SES**



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The Master Agreement

- **Format:** May be in a standard paragraph style MOA or FMS Form 6-10 7600A
- **Purpose:** Sets forth the general, fiscal, procurement, and other terms by which the parties agree to be bound.
- **Details:** Must include the roles and responsibilities for acquisition planning, contract execution, and the administration and management of the contracts
- **Determine if a current MOA already exists:** Consult the HQ USACE website and your own office to determine if an MOA already exists.
- **If need a new one:** Consult OFPP, June 6, 2008 Policy



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The Support Agreement (or Order)

- **Format:** Any, as long as it contains required elements. The other agency may have preferred form. Ex of acceptable forms: ENG Form 4914-R, DD Form 1144, FMS Form 6-10 7600B.
- **Purpose:** Serves as the funding document and it is used to describe the supplies or services needed.
- **Details:** It must at a minimum include →
 - ▶ A clear and detailed description of the supplies or services (often an attached scope of work);
 - ▶ Delivery requirements or period of performance;
 - ▶ A funds citation;
 - ▶ A payment provision;
 - ▶ The authority for the transaction (the Economy Act);
 - ▶ Any additional ordering procedures; andCertificate of Availability for Purpose



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Contract

Economy Act Orders

Requirements

- ▶ **Certification of Availability for Purpose** – (see FMR Vol. 11A, Ch. 3, para 030402)
 - **Purpose:** The “certificate” is merely a statement by the funds certifying official indicating that the funds cited on the order are properly chargeable for the purposes cited in the order.
 - This may be on or attached to the order. On the Economy Act D&F template, but
 - ▷ It may be on the order itself
 - ▷ An attachment to the order
 - ▷ On the MIPR



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Contract

Economy Act Orders

Requirements

- Economy Act D&F

- ▶ **Purpose:** To show that the Order is in the best interests of the Govt
- ▶ **Requirement arises from the Economy Act itself**, although the FAR expands on the contents of the D&F
 - **31 U.S.C. §1535(a)** The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if—
 - ▷ (1) amounts are available;
 - ▷ (2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;
 - ▷ (3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; *and*
 - ▷ (4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.



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Economy Act D&F

Minimum D&F Content Requirements:

- (1) Funding is available to pay for the support;
- (2) The servicing agency is able to provide the support;
- (3) The transaction does not conflict with any other agency's authority;
- (4) Use of an interagency transaction is in the best interest of the Government;
- (5) The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source; and



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Economy Act D&F

Minimum D&F content requirements (continued)

(6) At least one of the following circumstances applies:

- (i) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirement of the servicing agency for the same or similar supplies or services.
- (ii) The servicing agency has the capability or expertise to enter into a contract for such supplies or services that is not available within the requesting agency.
- (iii) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.



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Economy Act D&F

- **Approval Authority:** NWD SES (Non-delegable)
 - ▶ See FAR 17.502-2(c)(2) – “The D&F shall be approved by the contracting officer of the requesting agency..., *or by another official designated by the agency head[.]*”
 - Our agency head, DoD, determined that a higher level authority is more appropriate
 - ▷ See DoD FMR Vol. 11A, Ch. 3, para 030304
- **Format:** Template available.
- Include sufficient facts and analysis – i.e. don’t just state conclusions.
- After approval, a copy must be provided to the servicing agency – FAR 17.502-2(c)(3).



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Contract Economy Act Orders Requirements

► Best Procurement Approach Determination

- **Purpose:** To show that the use of an interagency acquisition represents the “best procurement approach”
 - ▷ As opposed to another approach – e.g. contracting for the goods/services ourselves
- Required by FAR 17.502-1(a).
- Required whether an assisted or direct acquisition.
- Contents of determination outlined in FAR 17.502-1(a)(1) & (2).
- If action over the SAT, may be combined with the non-DoD Cert required by AFARS 5117.7802.
- **Approval Level:** Written at the district level, with concurrence required by a district KO.



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Contract Economy Act Orders Requirements

Only required if action is over the SAT

► Non-DoD Certification D&F – AFARS 5117.702

- **Purpose:** To demonstrate that utilizing a non-DoD contract is in the best interests of DoD.
- Separate and distinct from the Economy Act D&F
- Template provided in UAI, Appendix 17-1 & 17-2
- Very similar to the Best Procurement Approach & therefore may be combined (if do this be sure to indicate the combination)
- **Approval Authority:** District O6/GS15 (Non-delegable).
 - Many other individuals required to concur – OC, Funds Cert Official, KO, DCC



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Contract

Economy Act Orders

Requirements

Only required if action is over the SAT

► **FAR 17.703 Certification from Non-DoD Agency**

- **Purpose:** To ensure non-DoD agency compliance with Federal & DoD procurement requirements.
- **Certification must be completed by the non-DoD Agency**
 - ▷ But, we cannot request a non-DoD agency conduct an acquisition on our behalf until they have completed a certification for that FY (or obtained a waiver)
- **Agency Certification can be found at the DPAP Interagency Acquisition Website –**
http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html



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Contract

Economy Act Orders

Requirements

- (1) Written Interagency Agreement – **NWD SES**
- (2) Certification of Availability for Purpose – **Funds Cert Official**
- (3) Determination & Findings (D&F) – **NWD SES**
- (4) Best Procurement Approach Determination – **District KO**

Additional requirements if over the SAT

- (5) Non-DoD Certification – AFARS 5117.7802 – **District O6/ GS15**
- (6) FAR17.703 Certification from Non-DoD Agency – **Head of Non-DoD agency**



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In-House

Economy Act Orders

Requirements

- (1) Written Interagency Agreement
- (2) Certification of Availability for Purpose
- (3) Determination & Findings (D&F)



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In-House

Economy Act Orders

Requirements

- **Written Interagency Agreement**
 - ▶ Required by DoDI 4000.19, Enc. 3, para 3.b.
 - ▶ **Usually consists of two documents** (but may be combined)
 - (1) *The Master Agreement (or Memorandum of Agreement (MOA))*
 - (2) *The Support Agreement (or Order)*
 - ▶ **Approval Authority for both documents is no lower than the NWD SES**



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The Master Agreement

- **Format:** May be in a standard paragraph style MOA or FMS Form 6-10 7600A
- **Purpose:** Sets forth the general terms and conditions governing the relationships between the parties.
- **Details:** Consult DoDI 4000.19, Enc. 3, Figure 1 for content requirements.
- **Determine if a current MOA already exists:** Consult the HQ USACE website and your own office to determine if an MOA already exists.
- **If need a new one:** Consult DoDI 4000.19, Encl 3, Figure 1



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The Support Agreement (or Order)

- **Format:** The other agency's form. But may suggest ENG Form 4914-R or DD Form 1144 or other similar form if they do not have one.
- **Purpose:** Serves as the funding document and it is used to describe the supplies or services needed
- **Details:** It must at a minimum include →
 - ▶ A clear and detailed description of the supplies or services (often an attached scope of work);
 - ▶ Delivery requirements or period of performance;
 - ▶ A funds citation;
 - ▶ A payment provision;
 - ▶ The authority for the transaction (the Economy Act);
 - ▶ Any additional ordering procedures; and
 - ▶ Certificate of Availability for Purpose



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In-House Economy Act Orders Requirements

- ▶ **Certification of Availability for Purpose** – (see FMR Vol. 11A, Ch. 3, para 030402)
 - **Purpose:** The “certificate” is merely a statement by the funds certifying official indicating that the funds cited on the order are properly chargeable for the purposes cited in the order.
 - This may be on or attached to the order. On the Economy Act D&F template, but
 - ▷ It may be on the order itself
 - ▷ An attachment to the order
 - ▷ On the MIPR



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In-House Economy Act Orders Requirements

- **Economy Act D&F**

- ▶ **Same Purpose – Govt’s best interest.**

- ▶ **Content requirements *almost* the same:**

- (1) Funding is available to pay for the support;
- (2) The servicing agency is able to provide the support;
- (3) The transaction does not conflict with any other agency’s authority;
- (4) Use of an interagency transaction is in the best interest of the Government; *and*
- (5) The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source



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In-House Economy Act Orders

Requirements

- (1) Written Interagency Agreement – **NWD SES**
- (2) Certification of Availability for Purpose – **Funds Cert Official**
- (3) Determination & Findings (D&F) – **NWD SES**



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Doctor says: Templates are very useful



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Economy Act D&F Templates

- Available on the NWD SharePoint site
- One template for Economy Act orders with a **contract action**
- One template for Economy Act orders with only **in-house work**
- Will likely be an enclosure to the updated NWD Policy
- Not mandated to use, but may be in the future.



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Determination and Findings

Economy Act Order
With
Contract Action

[Use this template if any portion of the work will be provided via contract, unless considered merely incidental. Use the "In-House" D&F Template if contracting is only incidental to the purpose of the transaction.]

SUBJECT: *[Insert Subject here.]*

1. References:

a. Memorandum, USACE NWD, CENWD-DE, 13 December 2013, subject: NWD Interim Policy Memorandum #07-12, Processing Economy Act Orders within the U.S. Army Corps of Engineers (USACE) Northwestern Division (NWD).

b. Federal Acquisition Regulation (FAR), Subpart 17.5, Interagency Acquisitions.

c. Department of Defense (DoD) Financial Management Regulation (FMR), 7000.14-R, Vol. 11A, Chapter 3, March 2012, subject: Economy Act Orders.

d. *[Only include this reference if your action is over the Simplified Acquisition Threshold (SAT):* Memorandum, Assistant Secretary of the Army, Acquisition, Logistics and Technology (ASA(AL&T)), July 12, 2005, subject: Proper Use of Non-Department of Defense (Non-DoD) Contracts.]

e. *[Only include this reference if your action is over the SAT: FAR Subpart 17.7, Interagency Acquisitions: Acquisitions by Non-Defense Agencies on Behalf of the Department of Defense.]*

2. Authority. The Economy Act (31 U.S.C. 1535) authorizes agencies to enter into agreements to obtain supplies or services (including construction) from another agency and applies when more specific statutory authority does not exist.

3. Purpose. This Determination and Findings (D&F) documents that the use of an Economy Act order to obtain *[insert supplies or service obtaining]* from *[insert non-DoD federal agency]* is in the best interests of the Government.

4. Requirement Information:



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Economy Act Orders with another DoD Agency (Intra-agency support)

■ Authorities:

- ▶ FAR 17.5 does not apply, whether via contract or not
- ▶ Follow DoDI 4000.19 and DoD FMR Vol. 11A, Ch. 3

■ Requirements:

- ▶ Interagency Agreement
 - *Master Agreement* not required, but recommended
 - *Support Agreement (or order)* required.
- ▶ **DD Form 1144** – If DD Form 1144 is used as the Support Agreement, no formal Economy Act D&F is required (so use DD 1144!!!)
- ▶ Certification of Availability for Purpose

- **Approval Authority** – District Commander may sign. Package stays at District level.



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Routing Packages to NWD

- A District Contracting Officer and District Office of Counsel member must concur on the package (signing the D&F will suffice)
- The package must include the Economy Act D&F to be signed by the NWD SES, as well as all supporting documents
- Submit the package electronically to NWD's District Support Planner, which right now is Jeremy Weber.
 - ▶ Send a courtesy copy to Sara Wolf
- Will be staffed for functional concurrence prior to NWD SES signature
- Keep a copy of the package for your files. Don't forget to send a copy of the approved D&F to the non-DoD agency



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Questions?



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